

thirty megahertz) in exchange for forgiveness of 50 percent of the debt associated with the original thirty megahertz of PCS Spectrum and application of 50 percent of the down payments associated with the original thirty megahertz of PCS Spectrum being applied against the repayment of the debt associated with the fifteen megahertz retained. The remaining 50 percent of the down payments associated with the surrendered spectrum would be forfeited to the U.S. Treasury. This option (and the status quo option) could be elected for some licenses and not others, i.e., on a Metropolitan Trading Area ("MTA")-by-MTA basis. A C-block licensee electing disaggregation was not permitted to bid in the re-auction of the PCS Spectrum it surrendered.

The amnesty option permitted licensees to return all of their licenses in exchange for forgiveness of the debt associated with the purchase of those licenses. The licensee's entire down payment, however, would be forfeited to the U.S. Treasury (in McBride's case, approximately \$500,000).

The prepayment option permitted the surrender of licenses in exchange for forgiveness of the debt associated with the purchase of the surrendered licenses and application of 70 percent of the down payments associated with the surrendered licenses toward the lump sum purchase of retained licenses at face value. The remaining 30 percent of the down payments associated with the surrendered licenses would be forfeited to the U.S. Treasury. A licensee that elected to prepay one license in an MTA would be required to prepay all licenses it could afford in that MTA. A

C-block licensee electing prepayment was not permitted to bid in the re-auction of licenses it surrendered.

The Second Report required C-block licensees to make their election among the three options by January 15, 1998 (the "Initial Election Date"). 37 petitions for reconsideration, 17 oppositions thereto, 16 replies to the oppositions, and 38 ex parte filings were submitted to the FCC in the aftermath of the Second Report. While the reconsideration of the Second Report was pending, the Initial Election Deadline was twice postponed, and now rests on *June 8, 1998.⁶

None of the options provided by the Second Report was commercially viable. Simply continuing the payments was not possible, because the decreased market value of the PCS Spectrum had made the financing necessary for a complete build-out at the bid prices unavailable. Id. A partial build-out under the disaggregation or prepayment options was not viable, because the reduction in McBride's "footprint" required to reduce McBride's debt to manageable levels, was too great to support McBride's business plan, which depended upon a nationwide footprint. Id. Amnesty was not viable, because the required forfeiture of McBride's approximately \$500,000 in down payments was simply too

??On January 7, 1998, the FCC postponed the Initial Election Date to February 26, 1998 (the "Postponed Election Date"). Then, on February 24, 1998, the FCC postponed the Postponed Election Date to 60 days after the publication of the Reconsideration Order (the "Second Postponed Election Date"). On April 17, 1998, by Public Notice published in the Federal Register, the FCC set the Second Postponed Election Date as June 8, 1998, where it has remained.

great a penalty for participation in the re-auction to follow. Id. In sum, the workout options fell short of providing meaningful relief, thus failing to remedy the FCC's failure to issue the C-block licenses promptly or to accomplish the statutory objective of promoting economic opportunity and competition through participation of small businesses in the emerging PCS industry.

On March 23, 1998, the FCC adopted the Order on Reconsideration of the Second Report and Order, WT Docket No. 97-82, Release No. FCC 98-46 ("Reconsideration Order") (copy attached as Exhibit A to McBride's Petition for Review herein). The Reconsideration Order thoroughly reviewed the Second Report and the entire history of the C-block auction as well as the subsequent quandary facing the C-block licensees. While the FCC made certain adjustments to the Second Report, it provided the same basic options as contained in the Second Report. In contrast to the Second Report, the Reconsideration Order permitted licensees to elect the amnesty option on an MTA-by-MTA basis and to "mix and match" all of the options. That is, a licensee could elect disaggregation for its licenses in the Los Angeles MTA, while electing amnesty for its licenses in the New York MTA, and prepayment for its licenses in the Miami MTA. The Reconsideration Order also made certain modifications as to the amounts and manner in which licensees' down payments could be utilized in connection with the workout options. In spite of these differences, the Reconsideration Order options were not

commercially viable for the same reasons that the Second Report options were not commercially viable.

In addition, the Reconsideration Order did not resolve, and the FCC has to date not resolved, certain outstanding issues with regard to the workout options which, as FCC Chairman Kennard has acknowledged, must be resolved prior to the Second Postponed Election Date, i.e., the attribution and control group rules crucial to determining financing structures, and therefore to meaningful election among the workout options provided in the Reconsideration Order. As Chairman Kennard wrote in a letter to the House Commerce Subcommittee on Telecommunications, Trade & Consumer Protection:

You correctly state that the Commission must still resolve a number of issues with regard to the re-auction of returned C-block licenses, among them attribution and control group rules. ...I plan to ask the Commission to take up these issues and resolve them by May 1998. This would ensure adoption of the rules well in advance of the election date and would, therefore, allow C-block licensees to make business decisions with full knowledge of the governing rules.

March 30, 1998 letter from Chairman Kennard to the Honorable W.J. Tauzin (Exhibit F to McBride's Petition for Review herein).

The attribution and control group rules are the subject of current FCC action under the same docket number under which the Second Report and Reconsideration Orders were issued. See In the Matter of Amendment of Part 1 of the Commission's Rules -- Competitive Bidding Procedures, WT Docket No. 97-82, Order, Memorandum Opinion and Order and Notice of Proposed Rule Making,

Adopted February 20, 1997 and the Second Further Notice of Proposed Rulemaking, Adopted December 18, 19987. In connection with other services where spectrum was set aside for qualifying small, minority, and women-owned businesses, but not PCS, the FCC has already simplified these rules to encourage investment. If the same rules simplification is implemented with respect to PCS -- as it may well be -- the C-block licensees elections would be directly affected. Specific aspects of the simplification have a direct impact on investment decisions. For example, if an entity chooses to structure itself under the FCC's "25 percent Control Group Option," the small business control group is required under current FCC rules to maintain a 25 percent share of fully diluted equity and cannot allow any non-qualified entity to hold more than 25 percent of equity. Because of these requirements, regardless of how much new capital is invested by a financing source, the financing source faces a dilution of its investment which is a disincentive to invest. Id. Conversely, if the control group rules are simplified and the artificial equity requirement lifted, allowing new capital to dilute the control group's economic ownership, financing sources are incentivized to invest, allowing C-block licensees to elect to keep more of their PCS Spectrum than they could afford in the absence of a simplification of the rules. Id. The FCC has made these changes for other services and has proposed to make them for all services, including PCS Spectrum. Id. It is irrational to force the C-block licensees to make their elections on June 8 while

this rules re-write issue remains open and pending before the FCC.

The Reconsideration Order also failed to address the point first raised by Bell South, that the debt forgiveness aspect of each of the three options is beyond the authority of the FCC. See Bell South Comments, WT Docket 97-82, filed June 23, 1997, at 10. Section 3711 of Title 31 of the U.S. Code provides that the authority of the head of an executive agency to settle a claim of the United States is limited to claims of not more than \$100,000. The potential debt forgiveness in connection with the C-block options is orders of magnitude greater than this \$100,000 limit.

In spite of the unresolved material issues, on April 17, 1998, by Public Notice published in the Federal Register, the FCC set the Second Postponed Election Date as June 8, 1998 and the date fo resumption of installment payments as July 431, 1998 ("Payment Resumption Date").

Meanwhile, General Wireless, Inc., the third largest (in terms of high bids accepted) C-block winner after NextWave, had filed for Chapter 11 bankruptcy protection. Two weeks after the Reconsideration Order was published in the Federal Register, on April 24, 1998, the General Wireless bankruptcy court held that the market value of General Wireless' licenses had fallen from \$1.06 billion on the auction date, May 8, 1996, to \$166 million by January 27, 1997, the date the licenses were granted, and, applying the constructive fraudulent transfer provisions of 11 U.S.C. § 548, the Court ordered that the difference between the two amounts, \$894 million in debt, be eliminated entirely.

Transcript of Proceedings, In re GWI PCS, Inc., (Bankr. N.D. TX. April 24, 1998) ("General Wireless") (attached as Exhibit G to McBride's Petition for Review herein). In short, as of April 24, 1998, one C-block licensee was effectively permitted yet a fourth option, unavailable outside of bankruptcy court, of retaining all of its C-block licenses by paying approximately sixteen cents on the dollar.

The result of the General Wireless decision has been to make it even more difficult for C-block licensees who have not filed for bankruptcy to obtain build-out financing.

Potential sources of financing are reluctant or unwilling to extend credit to McBride and other C-block licensees who have not avoided the lion's share of their debt to the FCC in bankruptcy, when licensees like General Wireless will be emerging from Chapter 11 reorganization with dramatically lower debt burdens and, / / /

therefore, dramatically lower cost structures, an obvious competitive advantage. Id.

Discussion

I. Likelihood of Success

McBride will succeed on the merits of its Petition for Review if it can demonstrate that the Reconsideration Order is arbitrary, capricious, not in accordance with law, or unsupported by substantial evidence. 5 U.S.C. § 706(2). As outlined in the recitation of facts above, there are at least three distinct aspects of the Reconsideration Order which render it subject to being set aside by the Court.

First, the Reconsideration Order is contrary to law, 47 U.S.C. § 309(j), because it does not provide a commercially viable procedure for the troubled small business C-block licensees to build out their PCS systems and instead forces them into bankruptcy, particularly in light of the General Wireless decision. Such a result violates the statutory mandate recognized by this Court in Omnipoint, 78 F.3d at 626, and, at a minimum, raises a "serious legal question" as to the validity of the Reconsideration Order.

Second, the Reconsideration Order is arbitrary and capricious because it requires C-block licensees to elect among various options without providing material information, i.e., the final attribution and control group rules which even Chairman Kennard concedes must be resolved to ensure reasoned elections. The FCC's failure to act on this material question, invalid on its face, constitutes additional ground for invalidity. See Greater Boston Television Corp. v. FCC, 444 F.2d 841, 852 (D.C. Cir. 1971).

Third, the Reconsideration Order is arbitrary and capricious and potentially contrary to law because the FCC has failed to resolve the material -- indeed, basic -- issue of the FCC's authority to grant debt forgiveness on the scale contemplated by the proposed elections. 31 U.S.C. § 3711. Simply ignoring such a crucial issue renders the Reconsideration Order invalid under Greater Boston. Section 3711 of Title 31 of the U.S. Code, provides explicitly that the authority of the head of an executive agency to settle a claim of the United States is

limited to claims "of not more than \$100,000." 37 U.S.C. § 3711(a)(2). Certainly, before the FCC can require elections, which potentially contemplate the forgiveness of billions in dollars of debt to the United States, the uncertainty concerning the legality of the very options scheduled to be exercised on June 8 must be resolved.

II. Irreparable Injury to McBride Absent a Stay

There can be little doubt that McBride faces irreparable injury in the absence of relief. If a stay is not granted, McBride will be forced to choose among options, potentially involving the irrevocable disposal of hundreds of millions of dollars in PCS Spectrum assets, while simultaneously being deprived of critical information necessary to maximize the ability to obtain financing. In the absence of relief, McBride may be forced to follow other C-block auction winners into bankruptcy. These critical decisions, with the collateral consequences to employees, suppliers, and investors, will be prematurely forced on McBride, all without assurance that the options among which McBride must elect are even within the FCC's authority. Literally, the entire business of McBride is at stake. In these circumstances, irreparable harm in the absence of a stay is clear. WMATC, 559 F.2d at 843 and n.2 (the destruction of a business in its current form is irreparable harm and not "mere" economic injury insufficient to warrant a stay).

III. Possibility of Harm to Other Parties if Stay Granted

The relief McBride seeks is to postpone the June 8, 1998 election deadline (which the FCC has itself twice postponed, sua

sponte). It would not harm the other C-block licensees but rather would allow those licensees to maintain their current licenses, preserving the status quo, while promising resolution of outstanding issues which will be a benefit to all concerned, as reflected by the fact that more than thirty-five other parties have petitioned the FCC to reconsider the Reconsideration Order.

IV. The Public Interest

The public interest in this case, to further Congressional intent as expressed in the governing statute, is to ensure that small businesses will be able to participate effectively in the emerging PCS industry and to obtain the consumer benefits derived from an enhanced competitive environment. A stay will clearly advance these interests. By contrast, rushing the C-block licensees into choosing among the incompletely considered options provided by the Reconsideration Order will deprive C-block licensees of necessary financing, will reduce competition and may promote bankruptcy, all in derogation of the public interest.

Conclusion

For the foregoing reasons, McBride's emergency motion to stay the FCC's Reconsideration Order pending review should be granted. As the Court held in WMATC, 559 F.2d at 844, and as is true here: "An order maintaining the status quo is appropriate when a serious legal question is presented, when little if any harm will befall other interested persons or the public and when denial of the order would inflict irreparable injury on the movant."

Vincent D. McBride (McBride) is acting in pro per, on behalf of himself. McBride has no objection to expediting the briefing schedule of this appeal during the pendency of a stay.

Respectfully submitted,

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Petitioner Vincent D. McBride

UNITED STATES COURT OF APPEALS

NINTH CIRCUIT

VINCENT D. MCBRIDE,)	Case No.:
)	
Petitioner,)	PETITION FOR REVIEW
)	
v.)	
)	
THE FEDERAL COMMUNICATIONS)	
COMMISSION and THE UNITED)	
STATES,)	
)	
Respondents.)	
)	

PETITION FOR REVIEW

Vincent D. McBride ("McBride") hereby petitions this Court for review of the Federal Communications Commission's Order on

Reconsideration of the Second Report and Order, WT Docket No. 97-82, Release No. FCC 98-46, adopted March 23, 1998 ("Reconsideration Order") (copy attached hereto as Exhibit A).⁷

Jurisdiction and Venue

1. Jurisdiction to review the Reconsideration Order (and to the extent deemed to be at issue herein, the Reconsideration Order) exists in this Court pursuant to 47 U.S.C. § 402(a) and 28 U.S.C. §§ 2342(1) and 2349(a), because this is a proceeding to enjoin, set aside, annul or suspend an order (or orders) of the Federal Communications Commission not enumerated in 47 U.S.C. § 402(b).

2. Venue lies in this Court pursuant to 28 U.S.C. § 2343, which provides that all petitions for review brought pursuant to 28 U.S.C. §§ 2341 - 2351 may be brought in this Court.

3. This Petition for Review of the Reconsideration Order is timely, because it is filed within 60 days of the April 8, 1998 publication of the Reconsideration Order in the Federal

??The Reconsideration Order was issued as the result of the FCC's reconsideration of its Second Report and Order In the Matter of Amendment of the Commission's Rules Regarding Installment Payment Financing for Personal Communications Services (PCS) Licenses, WT Docket No. 97-82, Release No. FCC 97-342, adopted September 25, 1997 (the "Second Report") (copy attached hereto as Exhibit B). To the extent the Court deems this Petition for Review to raise issues addressed in the Second Report, but not specifically addressed in the Reconsideration Order, McBride also seeks review of the Second Report.

Register, as provided by 28 U.S.C. § 2344 (60 days) and 47 C.F.R. § 1.4 (time runs from publication in the Federal Register).

4. To the extent the Court deems the Second Report to be at issue herein, this Petition for Review is timely with respect to the Reconsideration Order, because the 60-day period to seek review of the Second Report was tolled pending disposition of the 37 petitions for reconsideration of the Second Report filed by McBride and others, *i.e.*, until the April 8, 1998 publication of the Reconsideration Order in the Federal Register. See Southwestern Bell Telephone Co. v. Federal Communications Commission.

Parties

5. Vincent D. McBride (McBride) is an individual acting on behalf of himself.

6. The Federal Communications Commission ("FCC") is an agency of the government of the United States.

7. The United States is joined as required by 28 U.S.C. § 2344.

Nature of Agency Proceedings and Grounds for Relief

Summary

8. This Petition arises out of a series of actions and omissions of the FCC in connection with the licensing of a set of radio frequencies (the "PCS Spectrum") for use by private companies in the development and implementation of a new individual communications product, "Personal Communications Systems" or "PCS, specifically, the FCC'S mandate, pursuant to 47 U.S.C. § 309(j), to make a portion of the PCS Spectrum

available to small businesses, rural telephone companies, minorities, and women."

The PCS Auctions

9. Pursuant to 47 u.s.c. § 309(j), the FCC undertook to make the PCS Spectrum available to private parties interested in entering the PCS business through a competitive bidding auction process.

10. The FCC is required by statute to design the PCS auction process to serve certain specified purposes, including "promoting economic opportunity and competition ...by avoiding excessive concentration of licenses and by disseminating licenses among a wide variety of applicants, including small businesses, rural telephone companies, and businesses owned by members of minority groups and women." 47 U.S.C. § 309(j)(3)(B).

Financing

11. Pursuant to 47 U.S.C. § 309(j)(4)(A), the C-block auction winners were permitted to pay their bid amounts (net of down payments) in a series of installments, with interest, in recognition of the fact that the small businesses qualified to participate in the C-block auction, by definition, would be unable to pay the entire face value of their bids in a lump sum prior to build-out.

12. The FCC's unilateral action of suspending C-block installment payments entirely compounded the difficulties facing C-block licensees in obtaining financing, because of the uncertainty regarding when and how the FCC would re-start installment payment schedules, and because the FCC's action was

viewed by potential financing sources as further confirmation that the prices paid for C-block licenses were not commercially sustainable and that all of the C-block licensees were in financial trouble.

The Second Report and Order

13. On February 24, 1998, the FCC postponed the First Postponed Election Date to 60 days after the publication of the upcoming Reconsideration Order (the "Second Postponed Election Date").

The Reconsideration Order

14. It is totally irrational for the FCC to require the C-block licensees to make their elections on June 8 while this rules re-write issue remains open and pending before the FCC.

15. The resulting uncertainty over the elections' efficacy and the potential legal consequences thereof can be avoided by requiring that this issue be finally resolved before any election.

16. In spite of the two unresolved material issues -- control group rules and debt forgiveness authority -- on April 17, 1998, by Public Notice published in the Federal Register, the FCC set the Second Postponed Election Date as June 8, 1998 and the date for resumption of installment payments as July 31, 1998 ("Payment Resumption Date").

The General Wireless Decision

17. The result of the General Wireless decision has been to make it even more difficult for C-block licensees who

have not filed for bankruptcy to obtain build-out financing. Potential sources of financing are reluctant or unwilling to extend credit to McBride and other C-block licensees who have not avoided the lion's share of their debt to the FCC in bankruptcy, when licensees like General Wireless will be emerging from Chapter 11 reorganization with dramatically lower debt burdens and, therefore, dramatically lower cost structures, an obvious competitive advantage.

Pending Agency Action

18. More than thirty-five other parties petitioned the FCC to reconsider the Reconsideration Order for reasons substantially similar to those advanced by McBride herein. The vast majority of those petitioners requested that the FCC delay the June 8, 1998 deadline to make elections pursuant to Reconsideration Order.

19. McBride's Petition for Reconsideration of the Reconsideration Order remaining pending as of this filing.

Conclusion

20. The reconsideration order is arbitrary and capricious, unsupported in the record and contrary to law in that (a) it does not provide a commercially viable procedure for the troubled small business C-block licensees to build-out their PCS systems, (b) it does not address the consequences of the General Wireless decision which creates an incentive to file for bankruptcy in derogation of the statutory purposes of the C-block auction, and (c) because the Second Postponed Election Date is not predicated on the final resolution of outstanding, material

questions with regard either to control group and attribution rules or to the FCC's authority to grant debt forgiveness on the scale contemplated in the Reconsideration Order that is at the heart of all three of the election options.

Relief Requested

WHEREFORE, McBride respectfully requests the following relief:

1. That the Reconsideration Order, the June 8, 1998 Second Postponed Election Date and the July 31, 1998 Payment Resumption Date be immediately stayed pending resolution of this Petition for Review;

2. That the Reconsideration Order be enjoined and set aside and that the FCC be directed on remand forthwith to enter an Order providing commercially viable, financible options for the prompt build-out of C-block PCS licenses, avoiding incentives to file for bankruptcy, and resolving the outstanding control group and attribution rules and debt forgiveness issues;

3. That the Court grant McBride its costs and attorneys fees herein; and

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4. That the Court grant such other and further relief as it may deem appropriate.

Respectfully submitted,

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Petitioner Vincent D. McBride

**Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D. C. 20554**

In the Matter of)
)
Amendment of the Commission's)
Rules Regarding Installment)
Payment Financing For Personal)
Communications Services (PCS)
Licensees)

WT Docket No. 97-82

PETITION FOR STAY

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May 29, 1998

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SUMMARY

Vincent D. McBride respectfully requests to stay the Commissions C Block "Election Date" of June 8, 1998. For the reasons set forth herein, the Election Date should be stayed until a date not less than 90 days following:

- Resolution of procedural and substantive issues concerning the role of the U.S. Department of Justice ("DOJ") in implementing the alternative financing options the Commission has adopted in this proceeding.
- Commission action on pending control group ownership and affiliation rules.
- Commissions actions, in the wake of its proposed and exclusively tailored settlement agreement in the Pocket Communications bankruptcy proceeding.
- The Commissions actions in wake of the recent federal bankruptcy court ruling involving General Wireless.
- The Commission actions regarding an adjustment to the **Second Report and Order on Reconsideration** in order to reflect the new lower values set by the GWI ruling for the C Block COMPANIES NOT IN DEFAULT.
- Commissions actions on pending foreign ownership rule violations by companies in the C Block auction.
- Commission actions on the pending 7% interest rate petitions.
- The Commissions action on the material changes to a contract between the FCC and all C Block licensees.
- The **pending** request by the Commission to Congress regarding bankruptcy laws and FCC Auctions.

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C**

In the Matter of

WT Docket No. 97-82

Amendment of the Commission's Rules
Regarding Installment Payment
Financing for Personal Communications
Services (PCS) Licensees

To: The Commission

**COMMENTS AND PETITION FOR RECONSIDERATION ON THE
COMMISSION'S ORDER ON RECONSIDERATION OF THE SECOND REPORT
AND ORDER**

I, Vincent D. McBride, pursuant to Section 1.429 (f) of the Commission's rules, 47 C.F.R. 1.429(f) (1996) and Public Notice, DA 98-741 released April 17, 1998, hereby submit my comments and petition for reconsideration with respect to the above-captioned proceedings adopted March 23, 1998 and Released March 24, 1998.

Vincent D. McBride files these comments to urge the commission to reconsider the above order based on the April 24, 1998 ruling of Federal Bankruptcy Court Judge Steven A. Felsenthal. Judge Felsenthal has determined that "**reasonably equivalent value**" was not exchanged when the FCC granted 14 Entrepreneur's C-Block PCS licenses to General Wireless, Inc. The Bankruptcy court has revalued GWI licenses down to \$166 million. This is an 85% discount to GWI's net bid, a value on par with the D, E, & F Block auctions which each sold for 400% less than the Entrepreneur's C Block auction. This discount is similar to the amount that the Commission is willing to give to bankrupt Pocket Communication creditors, which bid a total of \$1.5 Billion for 43 licenses. This ruling is selective, and favors only the largest players in the Entrepreneur's C Block Auction, and again discriminates against the smallest players whose needs have been constantly ignored by the Commission.

The outcome of this ruling is most likely going to effect NextWave Personal Telecom. Inc. NextWave Telecom bid a total of \$4.2 Billion for 56 licenses. The bankruptcy option may well be the preferred direction, which NextWave Telecom may now consider as an obligation to its shareholders.

The Commission has been consistently unwilling to support the truly small bidders in the Entrepreneur's C Block auction. I'm talking about 43 small companies and individuals who each hold only one license and 13 small companies who hold two licenses each.

Before the

FEDERAL COMMUNICATIONS COMMISSION

Washington, D.C

Though this group represents over **HALF or 50%** of the total number of winning bidders, together account for only 1.75% of the total net bids made in the Entrepreneur's C Block auction. (See enclosure list of 43 C Block Companies)

It is now clear that the Entrepreneur's C Block auction total net bids of \$10 Billion was over-inflated by as much as 400% and was done so primarily by the bidding procedures of only four companies. These four companies alone account for over 70% of the total net bids:

- BDPCS, who bid \$873 Million could not make the first 5% down payment and blames loss of its licenses on US West Inc.
- POCKET COMMUNICATIONS, whose creditors are Ericsson and Siemens, has filed for bankruptcy, and are asking the FCC for a 50% discount on the Dallas & Chicago markets with NO penalties on its down payment.
- GWI PCS Inc. with backing from Hyundai filed for bankruptcy. Federal Judge Steven A. Felsenthal has discounted its net bids of over \$1 Billion by 85% with no penalty on its down payment.
- NEXTWAVE TELECOM INC. who, despite the official ruling by the FCC who found NextWave Telecom to be over the foreign ownership rules, by as much as 100% granted 63 licenses to NextWave, and did so with total disregard to the legitimate small bidders participating in the Entrepreneur's C Block auction. For the FCC to now claim that it cannot modify the so-called "integrity of the rules" is absurd, because the FCC has changed the rules constantly to accommodate the large players.

The Commission's order on reconsideration of the Entrepreneur's C Block states it was essential to ensure fair and impartial treatment for all auction participants. The C Block auction was actually partial, prejudicial and discriminatory from the very start. To start with, \$500 Million is not what I call a small business by any meaning of the word. The Small Business Administration (SBA) who's business is determining the boundaries of a small business, and has been doing so for 40 years has long decided a small business was a business with \$ 6 Million in assets or less. Yet the FCC had set the qualifications of a small business at 100 times that amount. The FCC ruling regarding this matter was based, in part on the idea that a large amount of capital was needed in order to compete in the Telecommunications business. This is a very subjective ruling, and was not based on the reality or record. You can find thousands of company's all over the world that started out in business with no more than \$500, and today are American, icons. Just who was World Comm?

Allowing NextWave Telecom into the C Block auction with the backing of South Korean companies, some owned in part by the South Korean Government that the IMF (backed and supported by the US Government) just bailed out to the tune of \$100 Billion. The FCC had full knowledge of NextWave and its violation of the foreign ownership rules from Antigone

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C**

Communications L.P., Devco Inc, and National Telecom Inc. This was also publicly reported to the Commission with a letter dated March 12, 1996 to then Chairman Reed Hundt from the President of GO Communications, Steve Zecola, which urged the Commission to investigate "**illegitimate bidders**" who were causing the rapid rise in marketplace values. In spite of this protest, the Commission made the choice to disregard these warnings. And now the Commission would like to preserve the "**integrity**" of the auction by imposing a 100% penalty on the down payments of the 43 small Entrepreneur's C Block winners who are being coerced into accepting the Amnesty option.

In light of the Federal Bankruptcy Court ruling on the GWI licenses it would be very unfair for the Commission to ask the 43 truly small auction winners to help pay for the \$700 Million plus discount to GWI. The option the commission is willing to give us includes a **ZERO** reduction to our net bids and a **100%** penalty on our down payments. Even if all 43 small bidders are to forfeit 100% of our down payments the total would only come to \$17.5 million and a re-auction of the 43 licenses would take up to a year. The prices at re-auction could be as low as 10 cents on the \$1.00 or as little as \$1.00 a license if the WCS or LMDS auctions are to repeat, and then the five year build out clock would start all over again. This would prevent any real competition in the small towns all across America, which the 43 smallest players have won. Towns like Williston ND. Population 13,000 - would not see new digital service until year 2005, if ever. It is no big secret in the wireless industry that the big A and B block players will not build out the small markets for some years down the road simply because of the build-out cost and the length of time to see any real return on their investment. The longer they wait, the less it will cost to build out the small towns.

I believe this would be against the Commission's main goals of promoting competition and encouraging Designated Entities to participate in the wireless telecommunications industry. This is a bold slap in the face to all participating small players in the Entrepreneur's C Block auction, as well as a breach of the Commission's objective and its statutory mandate from Congress under Section 309(j) of the Telecommunications Act. The Commission has an absolute responsibility to ensure the **integrity** of the Telecommunications Act, and to make good on the fundamental principles of the Entrepreneur's C Block Auction, and to fulfill what Congress had envisioned back in 1993. It would be a great blunder for the commission to now look the other way.

The "Options" which the Commission is offering to the small bidders are useless. Because we have only one market, any combination of desegregation or prepayment is not a choice, either is any other cocktail solution the Commission has come up with. The "Options" are unfair and biased treatment to the small Entrepreneur's C Block bidders. Additionally, no matter what extension of time the Commission is providing - 30 days, 60 days, or 30 years - we are holding licenses that are over-valued by as much as 400% and in some cases have no value at all! For the commission to suggest that by offering a 30-day extension of time, will assist license holders to complete their fund-raising efforts is ludicrous. To make matters worse, you just added a 5% late payment fee to boot.

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C**

Apparently the opposition to additional payment choices was proposed by AT&T - hardly a colorless observer! I do not question the right of AT&T to file an opposition, but I do question the impact it may have had on the Commission. As for the fairness to other applicants who might have bid differently under more relaxed payment terms, this includes unsuccessful bidders like U.S. Air Waves Inc. who's up front deposit of \$81 Million was equivalent to the total net bids of all 30 smallest winners together. There is a case to be made that the small bidders in the Entrepreneur's C Block auction may have bid considerably differently. If we had known that the top four bidders were going renege on their obligations, that the FCC was not going to uphold the foreign ownership rules and that the Commission planned to suspend all installment payments for one year. I could have bid \$1 Billion for the New York market, apparently the larger the obligation, the less it means to the FCC, as the Commission merrily changes the rules as it goes along.

The Commission further explained that licensees selecting "Amnesty" would benefit substantially by avoiding being declared in default and thereby being freed from assessments of delinquencies. One has to ask if the licensees could seek the same from bankruptcy.

Your so-called "**concern**" for the taxpayer is a misnomer and a politically driven deceit. How can the same FCC who was granted a mandate by Congress in 1993 to auction the "American air waves" to the small businesses of America rationalize given away \$70 Billion in HDTV licenses to companies like General Electric, Westinghouse, and Walt Disney who simultaneously own NBC, CBS, and ABC? Where was your concern for the "**tax payer**" in that decision? At best the Commission's decisions seem arbitrary, at worse they seem to favor those in position of power and money - the really big players. Again, the little guy - in spite of congressional mandate - is the real loser.

FOR CONSIDERATION:

- The June 8, 1998 Election Date to decide on the present options, must be delayed until after the decisions of the courts regarding the status of the bankruptcy of GWI and Pocket Communications. In addition, this Election Date must come after the Commission's decision on the interest rate.
- 100% return of all down payments, plus back interest at 7% to date, for any company choosing the Amnesty Option.
- The interest rate must be the same for all Entrepreneurs' C Block licenses. The interest must be based on the day the C Block auction ended (May 7, 1996) and based on the ten-year U.S. Treasury note auction held on February 15, 1996. Which was 5.75% at the time.